

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANDRES BRYAN,

Plaintiff,

-v.-

THE CITY OF NEW YORK, et al.,

Defendants.  
-----X

REPORT AND  
RECOMMENDATION  
AND ORDER

11 Civ. 2528 (BSJ) (JLC)

**To the Honorable Barbara S. Jones, United States District Judge:**

**JAMES L. COTT, United States Magistrate Judge.**

The parties appeared before me today for a pretrial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure. Based on discussions with the parties at the conference, I hereby recommend that the Court dismiss without prejudice all claims against Defendants Barbara Hutter and Moraima Reyes. In addition, the City of New York, which is the only Defendant that has been properly served in this case, has advised the Court that it intends to move for judgment on the pleadings under Rule 12(c). The Court has set forth a briefing schedule, which appears below.

# **I. Report and Recommendation**

Plaintiff Andres Bryan, proceeding pro se, filed a Complaint in this matter on December 6, 2010 in the United States District Court for the Eastern District of New York. (Dkt. No. 1). By Order dated April 8, 2011, the action was transferred to this Court (Dkt. No. 12), and on June 2, 2011, the Clerk issued an Amended Summons. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

USDC SDNY  
DATE SCANNED

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But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Pursuant to Rule 4(m), Bryan was required to serve the Summons and Complaint on all Defendants by September 30, 2011. By Order dated September 7, 2011, I warned Bryan that if no application was made in writing by September 30, 2011 to extend the time for service showing good cause for failure to serve, this action may be dismissed.

To date, there has been no proof of service filed with respect to Defendants Hutter and Reyes. In addition, Bryan advised the Court at today's conference that he does not intend to serve Reyes because she no longer resides in the United States. Moreover, as to Defendant Hutter, the Court has already dismissed Bryan's monetary claims against her by Order dated May 5, 2011. (Dkt. No. 17). Accordingly, because the 120-day period permitted under Rule 4(m) has expired and Bryan has not shown good cause for the failure to serve the Summons and Complaint, I recommend that the Complaint be dismissed without prejudice as to Defendants Hutter and Reyes.

## **II. Briefing Schedule**

The only Defendant who has been properly served is the City of New York, which filed an Answer on February 21, 2012. (Dkt. No. 22). The City has advised the Court that it intends to move for judgment on the pleadings pursuant to Rule 12(c). As agreed by the parties, the City shall file its motion and supporting papers by April 13, 2012. Bryan shall file an opposition by June 15, 2012. The City may file any reply by June 29, 2012.

## **PROCEDURE FOR FILING OBJECTIONS**

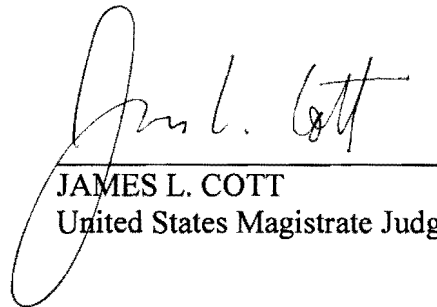
Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections to the Report and Recommendation, set forth in Section I above. See also Fed. R. Civ. P. 6. Such objections, and any responses to such objections, shall be filed with the Clerk of

Court, with courtesy copies delivered to the chambers of the Honorable Barbara S. Jones and to the chambers of the undersigned, United States Courthouse, 500 Pearl Street, New York, New York, 10007.

Any requests for an extension of time for filing objections must be directed to Judge Jones. **FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW.** See Thomas v. Arn, 474 U.S. 140 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010) (citing Cephas v. Nash, 328 F.3d 98, 107 (2d Cir. 2003) and Mario v. P & C Food Mkts., Inc., 313 F.3d 758, 766 (2d Cir. 2002)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.

**SO ORDERED.**

Dated: New York, New York  
March 1, 2012



JAMES L. COTT  
United States Magistrate Judge

**Copies of this Report and Recommendation and Order have been sent by ECF to counsel and mailed to the following:**

Andres Bryan  
175 Irving Avenue  
Apt. #1  
Brooklyn, NY 11237

Alexandra Corsi  
New York City Law Department  
100 Church Street  
New York, NY 10007

Pro Se Office – Room 230

Hon. Barbara S. Jones